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6 State Bar I.D. No. 005188

FILED

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JAN 10 1991

ETHEL BOUTON, Clerk

By Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

8 GEORGE W. HANCE, et al.

9 Plaintiff,

10 vs.

11 WALES ARNOLD, et ux., et al.

12 Defendant.

) No. 4772

) Division 3

) MOTION FOR RECONSIDERATION,
) AND/OR MOTION TO REOPEN CASE
) FOR ADDITIONAL EVIDENCE
) AND/OR MOTION FOR NEW TRIAL

) (Oral Argument Requested)

14 Petitioners in this matter, the Commissioners of the Verde
15 Ditch, respectfully request that the Court reconsider its decision
16 as set forth in the Minute Entry dated November 6, 1990, or, in the
17 alternative, reopen the matter for additional evidence, or, alter-
18 nately, grant a new trial, all as more fully set forth in the
19 attached Memorandum of Points and Authorities.

20 This motion is made pursuant to Rule 59, Arizona Rules of
21 Civil Procedure, and Rule IV(h), Uniform Rules of Practice for the
22 Superior Court, and is supported by the pleadings on file herein and
23 the attached Memorandum of Points and Authorities.

24 RESPECTFULLY SUBMITTED this 9th day of January 1991.

25
26
27 L. Richard Mabery
28 101 E. Gurley St., Ste. 203
Prescott, Arizona 86301
Counsel for VERDE DITCH COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

The apparent basis of the Court's decision as set forth in the Minute Entry dated November 6, 1990, was that "the Court does not find that Plaintiff presented any evidence that Defendants Davis' land is legally burdened with any sort of easement right, either primary or secondary, in favor of Plaintiff. The 1963 Rules and Regulations, Exhibit No. 1 in evidence, may possibly be interpreted to burden the lands of shareholders in the Ditch Company, but there is no sufficient evidence to conclude that the Davises are shareholders." The complexity in understanding the process and issues before the Court requires a brief digression as to the history of the Verde Ditch and the Hance v. Arnold, No. 4772, decree.

The Verde Ditch, as it is now known, is approximately eighteen miles in length. Its point of diversion is in the Middle Verde area and it continues on the west side of the Verde River around the Town of Camp Verde, generally running parallel to Salt Mine Road south of Camp Verde. The earliest appropriation of water on record appears in the year 1868. The ditch was originally used not only for agricultural purposes, but also supplied water to the calvary post at Fort Verde. While the lands served by the Verde Ditch have not changed (approximately 1400 acres), the number of land owners has increased from the original eleven mentioned in the 1909 decree to approximately five hundred today.

After 1868, the affected property owners in the area of the Davises' property grouped together with their neighbors to construct the relevant portion of the Verde Ditch. The ditch crossed property owned by different ditch constructors and carried

1 irrigation water to their respective properties. Throughout the
2 period that the ditch has been in existence, the users of the ditch
3 and the commissioners (after 1908) have used the area adjacent to
4 the ditch to perform maintenance and keep the ditch in operation.
5 Title 73, Chapter II, Section 19, of the 1901 Arizona Revised
6 Statute provided:

7 In case a community or people desire to
8 construct an acequia in any part of this terri-
9 tory, and the person desiring to construct the
10 same are the owners or proprietors of the land
11 upon which they design constructing the said
12 acequia, no one shall be bound to pay damages
13 for such land, as all persons interested in the
14 construction of said acequia are to be benefit-
15 ted thereby.

16 The Davises' property involved in this litigation is a
17 part of an original U.S. patent dated June 11, 1900, and recorded in
18 Book 52 of Deeds, Pages 223-225, Records of Yavapai County, Arizona.
19 The patent, signed by President William McKinley, was recorded
20 September 22, 1900, and provided in its pertinent portion:

21 To have and to hold, the same together with all
22 the rights, privileges, immunities, and appur-
23 tenances, of whatsoever nature, thereunto be-
24 longing, unto the said William Stephens and to
25 his heirs and assigns forever; subject to any
26 vested and accrued water rights for mining,
27 agricultural, manufacturing, or other purposes
28 and rights to ditches and reservoirs used in
connection with such water rights, as may be
recognized and acknowledged by the local cus-
toms, laws, and decisions of courts, and also
subject to the right of the proprietor of a
vein or lode to extract and remove his ore
therefrom, should the same be found to pene-
trate or intersect the premises hereby granted,
as provided by law; and there is reserved from
the lands hereby granted, a right of way there-
on for ditches or canals constructed by the
authority of the United States.

(Exhibit 1)

On October 20, 1908, William J. Davis conveyed the property to Ellsworth W. Monroe, as shown by a Warranty Deed in Book 86 of Deeds, Page 562, Records of Yavapai County, Arizona. That deed included not only a description of the real property, but also the following:

Together with an undivided one-fortieth (1/40) interest in and to the New Verde Ditch built by John Wood and others for the purpose of conveying the water of the Verde River onto and irrigating the above and other lands in Verde Valley Arizona (sic).

(Exhibit 2)

On or about February 24, 1908, George W. Hance and Partheny H. Hance, as Plaintiffs, filed their Amended and Supplemental Complaint in the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the County of Yavapai. The Complaint requested that the court establish the rights of certain parties in and to the use of water flowing in the Verde Ditch and also requested:

[T]hat the court appoint some suitable superintendent, who shall supervise and superintend, under the authority and direction of the court, the proper appropriation and distribution of said waters, with power, conferred by the decree of this honorable court, to enforce the same; and that the court determine in what proportion each of such appropriators shall contribute to the expense of the care and maintenance of said ditches and pipe line.

(Exhibit 3)

On or about March 3, 1908, the court entered its first Interlocutory Order appointing the first ditch commissioner. As part of the duty of the ditch commissioner, he was to "keep the ditch clean" and "he shall put the ditch in repair from the diversion from the river to the last farm irrigated." After further

1 consideration and arguments by the parties, it appears that Judge
2 Sloan entered his Conclusions of Law and Judgment setting forth the
3 respective water rights of the parties and establishing how the
4 expenses and repairs would be borne by those persons entitled to use
5 water flowing in the ditch. (Exhibit 4)

6 The Arizona Enabling Act, Section 32, states:

7 State courts * * * shall * * * be the succes-
8 sors of * * * the district courts of said Ter-
9 ritory as to all such cases arising within the
10 limits embraced within the jurisdiction of said
11 courts, respectively, with full power to pro-
12 ceed with the same and award mesne or final
13 process therein; * * *.

14 Thus, it appears, as would be true of virtually all
15 property adjacent to the Verde Ditch, that the Davises' predecessor
16 in title, (in this particular case, E. W. Monroe) was in fact a
17 party to the original litigation for the Stipulation of Facts filed
18 in the Hance v. Arnold action indicates on p. 3 that the owners in
19 the new ditch include "E. W. Monroe, 3/40 or 15/200." (Exhibit 5)

20 There is no dispute that the Verde Ditch has been in
21 existence for over one hundred years. Since the entry of the Hance
22 v. Arnold decree in 1909, the ditch commissioners, under the guid-
23 ance of the Yavapai County court, have operated and maintained the
24 ditch. In order to operate and maintain the ditch, the commission-
25 ers and their agents have necessarily required access to the areas
26 adjacent to the ditch.

27 In Miller v. Douglas, 7 Ariz. 41, 60 P. 722 (1900),
28 Douglas brought an action to recover damages and to obtain an
injunction restraining the defendant from interfering with the ditch
through which Douglas was diverting water to irrigate his land. The
ditch so used by Douglas was constructed across the defendant's

property when the property was owned by the defendant's predecessor in interest. The court, in holding that Miller could not now complain about the location of the ditch or Douglas crossing his land to maintain the ditch, stated as follows:

The position is assumed by the defendant that plaintiff has no right to go through the Brookline pasture-field; that every time he went into the field to reconstruct the dam he was a trespasser; and that, being a trespasser, the defendant could fill up plaintiff's ditch without being subjected to damages. It is conceded by the defendant that an appropriator of water can change his point of diversion, but it is denied that he can enter the inclosure of another for that purpose; and some argument has been made before the court and on the brief as to what extent one may go upon the inclosure of another, while the same is public land, to make such new diversion. There is some conflict in the evidence as to whether the Brookline ranch from the time that W. C. Land inclosed it had been in the actual, or even the legal, occupation of any one during all the years up to the time defendant went into possession, and using it, until he sold to Miller. If so, he and his successor are estopped by acquiescence. It is certain, under the evidence, that Douglas built the canal through the Brookline ranch in 1890, and ever afterwards, up until he was disturbed, in December, 1896, maintained the canal and maintained the dam in the Brookline ranch. If Land was in possession of it, he had allowed all time to go by in which either he or his successor to him could complain. If he were not in possession, and the ranch was of the nature of unoccupied public land at the time Miller came into possession, it is clear that Miller would have to take it subject to the conditions in which he found it.

7 Ariz. at 44.

Wedgworth v. Wedgworth, 20 Ariz. 518, 181 P.2d 952 (1919), was another action where the plaintiff brought suit against defendants to enjoin interference with the flow of irrigation water in a

* * * * *

1 ditch over the defendants' lands. The court held that the defen-
2 dants had no right to interfere with the plaintiff's ditch located
3 on the defendants' property and stated:

4 The long-continued use by the plaintiff of
5 the Center ditch for the purpose of conducting
6 the water purchased by him from the Buckeye
7 Irrigation Company under a claim of absolute
8 and permanent right, under the circumstances
9 above stated, amounted to more than a mere
10 revocable license. The right claimed by the
11 plaintiff was not temporary in its character,
12 but evidently based upon the assumption that he
13 had such right and followed by conduct on his
14 part consistent therewith. The acquiescence on
15 the part of the defendant J. B. Wedgworth was
16 not merely by silence, but by affirmative acts
17 and conduct on his part. On the basis of such
18 right, the plaintiff expended money and adjust-
19 ed his affairs, so to speak, with reference to
20 such right. In this situation the doctrine of
21 estoppel by acquiescence applies, and the de-
22 fendants are estopped from denying the right
23 claimed by the plaintiff. Miller v. Douglas, 7
24 Ariz. 41, 60 Pac. 722; 2 Kinney on Irrigation
25 and Water Rights, Secs. 1126, 1127. The court
26 below therefore properly enjoined the defen-
27 dants from interfering with the right of the
28 plaintiff to conduct the water purchased by him
from the Buckeye Irrigation Company through the
Center ditch.

20 Ariz. at 522.

19 The testimony is clear that the commissioners or agents or
20 employees of the ditch company have used the areas along the ditch
21 on the Davises' property numerous times in the past and it will be
22 necessary to continue to do so in the future if the ditch is to be
23 properly and safely maintained. Since 1909, the Verde Ditch has
24 been under a court order with directions to maintain the ditch and
25 deliver water to the shareholders. There is no point in having
26 rights to water carried by a ditch if there is no right to have the
27 ditch and maintain it. As is stated in San Bernardino Valley

Municipal Water District v. Meeks and Daley Water Company, 38

Cal.Rptr. 51, (Cal. 1964):

Since use of water is the sine qua non of an appropriative or prescriptive water right, it follows that the transportation system necessary to get the water to the place of use is as much a part of such water rights as are the works constructed at the point of diversion.

38 Cal.Rptr. at 54.

In Papa v. Flake, 18 Ariz.App. 496, 503 P.2d 972, the Arizona Court of Appeals stated:

The prior existence of the easement is not questioned. The law is well settled that a dominant owner, using due care to not needlessly increase the burden of a servient tenement, has a right to enter upon the servient tenement for the purposes of upkeep and repairs of the easement. The easement carries with it the right to do all acts necessary and proper in order to obtain full enjoyment of the easement. (citations omitted)

In Mosher v. Salt River Valley Etc. Assn., 24 Ariz. 339, 209 P. 596 (1922), the court quoted with approval the following from 2 Kinney on Irrigation and Water Rights, 2d ed. Sec. 992, and authorities cited:

"Where a permanent easement has once been acquired over the lands of another, and the ditch or canal has once been constructed, the owner of the primary easement has the right, as a secondary easement, to go upon the lands and remove obstructions from the ditch, and to make other repairs necessary, consistent with the full enjoyment of the easement. Such a right or easement carries with it the right to the full enjoyment of the easement itself. . . ." 24 Ariz. at 344, 209 P. at 597.

The owner of an easement has the right to enter a servient estate at all reasonable times to effect the necessary repairs and maintenance. (citations omitted)

18 Ariz.App. at 498.

Mosher v. Salt River Valley Etc. Assn., 24 Ariz. 339, 209 P. 596 (1922), involved a factual situation similar to the Davis issue. Mosher began to construct a wooden platform over a portion of the canal bank located on their land. The platform was apparently constructed about four feet above the bottom of the canal and consisted of timber joists two inches by eight inches laid upon timbers placed on the sides or banks of the ditch. The trial court granted a restraining order and temporary injunction ordering Mosher to remove the structure placed on the canal banks. The court found the law well-settled that a right or easement for a ditch carries with it the right to the full enjoyment of the easement itself, including the right to enter, repair and do those things necessary to the full enjoyment of an easement. The right to preserve the flow of water in the ditch also extends to the removal of obstructions from the natural stream from which the water is taken. Therefore the question arose whether the structure erected by Mosher unreasonably interfered with or obstructed the practical operation and use of the canal. The court stated:

We would certainly not be warranted in holding as a matter of law that this structure 118 feet in length and but four feet above the bottom of the ditch is to be justified as consistent with the full enjoyment of the easement to operate, maintain and use the canal, and the necessity of access thereto for repair and to clean the same of earth, debris and other obstructions that naturally accumulate there. The finding of the court that under circumstances of proper operation a necessity exists for access to the ditch and siphon for these purposes, with the other facts found, including the customary and prior use of the ditch as an open one, we think support the conclusion of law and the judgment based thereon that the construction of the wooden platform constitutes in the respects alleged an interference with the easement rights of the United States in and to the ditch.

24 Ariz. at 345.

The general rule of law is in accord with the Arizona authorities. In 45 Am Jur 2d Irrigation Sec. 77, the rule is simply stated as follows:

The rights of one having an easement for irrigation purposes are measured and defined by the purpose and character of the easement. The owner of a ditch or canal which runs across the lands of another has the right to enter on such lands in order to do necessary cleaning and to make needed repairs. * * *

As a general rule, one purchasing land across which lies an irrigation ditch takes subject to the easement therefor, provided, of course, the condition of the ditch is such as to charge the purchaser with notice.

Not unsurprisingly, this is not the first time that the issue of the Verde Ditch easement across shareholder or nonshareholder property has come before the Yavapai County Superior Court. In fact, a review of the Yavapai County Superior Court's files indicate that in 1981, the then commissioners of the Verde Ditch, Ted Allert, Glen W. Everett and Vince V. Higginbotham, filed an Order to Show Cause in the Yavapai County Superior Court against The Seedling Nursery Inc., an Arizona corporation, James A. Ziemkowski and Betty L. Ziemkowski and Outpost Townhouses, an Arizona partnership, in Cause No. C-39195. In that case, respondents Seedling Nursery, Inc. and the Ziemkowskis were not shareholders in the Verde Ditch. The respondents argued strenuously that the Verde Ditch had not been on their side of the ditch for numerous years. The Verde Ditch agreed that its use of the westerly bank on The Seedling Nursery's property for movement of equipment up and down the ditch bank had not been used in many years, but that the ability to move up an down the ditch was needed and necessary to properly maintain

1 the ditch. The Honorable James Hancock granted the injunction and
2 restraining order against both shareholder and nonshareholder alike.
3 Seedling Nursery and Ziemkowskis appealed the action to the Arizona
4 Court of Appeals. Division I of the Arizona Court of Appeals issued
5 a unanimous Memorandum Decision pursuant to Rule 28, Arizona Rules
6 of Civil Appellate Procedure, upholding the trial court's determina-
7 tion.

8 In a Judgment entered October 17, 1986, in the combined
9 cases, Allert, et al., Commissioners of the Verde Ditch Company v.
10 Albert James, et al., Nos. 44140 and 45701, the Yavapai County
11 Superior Court, Division 1, granted an easement to the Verde Ditch
12 Company across a nonshareholder's property (James) "of sufficient
13 width, along each side of the Verde Ditch to allow for ingress,
14 egress and the maintenance and repair of the Verde Ditch as it
15 exists over and across the following described property * * *."
16 (Exhibit 6) The Arizona Court of Appeals upheld the trial court's
17 decision in Verde Ditch Company v. James, 157 Ariz. 369, 758 P.2d
18 144 (1988).

19 On November 28, 1988, the Yavapai County Superior Court,
20 Division 2, in The Estate of Virginia F. Webb v. The Verde Ditch
21 Co., et al., No. 47115, entered a final Judgment where the court,
22 after trial, entered its order granting:

23 [T]he rights of the Verde Ditch Company in the
24 Verde Ditch which crosses said real property and
25 a secondary access easement for maintenance and
26 repair of the Verde Ditch. The primary and sec-
27 ondary easements are defined as an area thirty
28 (30) feet in width on each side of the Verde
Ditch, measured from the center line of the Verde
Ditch as it exists as of the date of this Judg-
ment. The secondary access easement for mainte-
nance and repair of the Verde Ditch shall include
the right of the Verde Ditch Company to cut and

1 remove any trees, brush or other growth contained
2 within the easement way at such time as removal
is needed or necessary for the maintenance and
repair of the Verde Ditch.

3 (Exhibit 7) Again, the plaintiff, The Estate of Virginia Webb, was
4 not a shareholder in the Verde Ditch.

5 Thus, in three previous decisions of the Yavapai County
6 Superior Court, including two appeals therefrom, access to both
7 sides of the ditch for maintenance and repair has been upheld.

8 Since the original pronouncements of Judge Sloan, Judge
9 Jack L. Ogg, Judge the Yavapai County Superior Court and Master of
10 the Verde Ditch, issued Rules and Regulations dated June 4, 1963.
11 In those Rules and Regulations Judge Ogg provided as follows:

12 2. The Commissioners, their agents, employees
13 and equipment shall have the right of usage at
14 any time of necessary work areas adjacent to the
Ditch in pursuit of maintenance, repair and oper-
ation of the facility. * * *

15 3. Construction or installation of gates,
16 buildings, cross-fences, or any other obstruction
17 over the Ditch or in the work area which may
interfere with usage of the work area or Ditch is
forbidden.

18 Neither of the paragraphs set forth above state or indicate
19 that they were, expressly or implicitedly, applicable only to share-
20 holders. The only language in Paragraphs 2 and 3 of Judge Ogg's
21 promulgated Rules and Regulations which referred to a shareholder
22 was contained in Paragraph 2, wherein he stated that private proper-
23 ty of shareholders may be crossed in order to gain access to ditch
24 work areas. The restriction on crossing private property of a
25 nonshareholder to reach the ditch is not only supported by logic,
26 but also the general law of easements. If the Verde Ditch Company
27 needs to reach a work area along the ditch, it must either do so by
28

1 moving up and down the ditch bank itself, or crossing a sharehold-
2 er's property to reach the ditch. Judge Ogg simply prohibited the
3 crossing of a nonshareholder's private property to reach the ditch.
4 Such an interpretation is entirely consistent with the remaining
5 portion of the Rules and Regulations. The 1963 Rules and Regula-
6 tions were recorded on March 19, 1984 in Book 1615, Pages 551-553,
7 Official Records of Yavapai County, Arizona.

8 On August 8, 1989, the current Master of the Verde Ditch,
9 Judge Richard Anderson, revised the Rules and Regulations after
10 public comment and a hearing, and entered an Order Promulgating New
11 Rules and Regulations for the Operation of the Verde Ditch. The
12 revised Rules and Regulations were recorded on September 17, 1989,
13 in Book 2192, Pages 204-212, Official Records of Yavapai County,
14 Arizona. Rules 2 and 3 thereof provide as follows:

15 2. The commissioners, their agents and/or
16 employees, using appropriate equipment, shall
17 have the right of useage (sic) at all times to
18 the work areas adjacent to and on both sides of
19 the ditch for the purposes of maintenance, re-
20 pair, and operation of the Verde Ditch. Private
21 property may be crossed in order to gain access
22 to the Verde Ditch.

23 3. Construction or installation of gates,
24 buildings, posts, fences, cross-fences or any
25 other obstruction along or over the ditch or in
26 the area adjacent to the ditch which interferes
27 with the flow of the Verde Ditch or the ability
28 of the Verde Ditch commissioners, agents or em-
29 ployees to move necessary equipment up and down
30 the ditch and ditch banks is prohibited.

31 Both Judges Ogg and Anderson recognized the need and
32 necessity of being able to maintain the ditch. In Paragraph 1 of
33 the 1963 Rules and Regulations Judge Ogg stated that "the procedures
34 must be renovated if the irrigation water necessary to the welfare

35 * * * * *

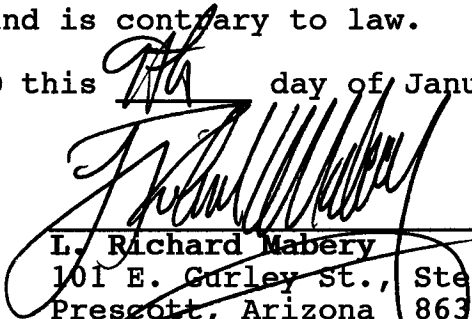
1 of shareholders is to be available for continued delivery." Like-
2 wise, Judge Anderson stated in the beginning paragraph of his Order
3 Promulgating New Rules and Regulations that "[e]xisting procedures
4 must be revised and amended if the water necessary for the welfare
5 and needs of all of the Verde Ditch shareholders is to be available
6 now and in the future." Mr. Davis admitted that he bought his
7 property after the recording of the 1963 Rules and Regulations, and
8 that he built his fence before the recording of the 1989 revised
9 rules. Davis simply disputes the need or necessity of being able to
10 repair or work on the ditch from his side of the ditch bank.

11 The decision of this Court as reflected in the November 6,
12 1990 Minute Entry must be reviewed. With thirty-six miles of ditch
13 bank to maintain, the Verde Ditch Company simply cannot be constant-
14 ly moving from one side to the other to maintain the ditch because
15 of newly created obstructions on its historical and previously used
16 ditch bank. If left as it is, the November 6, 1990 Minute Entry
17 will lead to chaos and confusion, an increasing inability to repair
18 and maintain, and/or a multitude of lawsuits to determine whether a
19 right of use and easement exists as all of the previous court
20 determinations have held or whether a new rule of law now applies.

21 For all of the foregoing reasons, it is respectfully
22 requested that the Court reconsider its decision as reflected in its
23 November 6, 1990 Minute Entry or, in the alternative, reopen the
24 trial for additional evidence to prove to the Court that the
25 Davises' predecessors in title were in fact original parties to the
26 Hance v. Arnold litigation and for the Court to take judicial notice
27 of the other Yavapai County Verde Ditch Judgments, or that the Court
28

1 grant a new trial pursuant to Rule 59(a)(8) because the decision is
2 not justified by the evidence and is contrary to law.

3 RESPECTFULLY SUBMITTED this 10th day of January, 1991.

4
5 
6 L. Richard Mabery
7 101 E. Gurley St., Ste. 203
8 Prescott, Arizona 86301
9 Counsel for VERDE DITCH COMPANY

8 COPY of the foregoing MOTION FOR
9 RECONSIDERATION, MOTION TO REOPEN
10 CASE FOR ADDITIONAL EVIDENCE AND/OR
11 MOTION FOR NEW TRIAL mailed this
12 10th day of January, 1991, to:

11 Douglas G. Wymore, Esq.
12 1136 East Campbell
13 Phoenix, Arizona 85014
14 Counsel for DAVIS

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15 MH/VDitch.Wk1
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LAW OFFICES OF
L. RICHARD MABERY, P.C.
101 E. GURLEY • SUITE 203
PRESCOTT, ARIZONA 86301
(602) 778-1116

52/233
DB

and all to use in these presents shall come, bearing
 witness, William Stephens, of Yavapai County,
 Arizona, has deposited in the General Land
 Office of the United States a Certificate of the
 Register of the said Office at Prescott, Arizona,
 in and to wit, that said payment
 was made by the said William Stephens
 according to the provisions of the Act of
 Congress, the 24th of April, 1820, entitled
 "An Act making provision for the
 sale of the Public Lands," and the acts
 supplemental thereto, for the South West quarter
 of the South East quarter, and the South East
 quarter of the South West quarter of section
 thirty one in Township four north, and
 the lot numbered three, and the South East
 quarter of the North West quarter of section six
 in Township thirteen North, of Range five East
 of Gila and Salt River Meridian, in Arizona,
 containing one hundred and sixty acres,
 according to the Official Plat of the survey
 of the said lands, returned to the General
 Land Office by the Surveyor General, which
 said tract has been purchased by the said
 William Stephens now known as that the
 United States of America, in consideration of
 the premises, and in conformity with the
 several acts of Congress in such case made
 and provided, have given and granted, and
 by these presents do give and grant, unto the
 said William Stephens and to his heirs, the
 said tract above described; To Have and to
 hold, the same together with all the rights,
 privileges, immunities and appurtenances of
 whatsoever nature, thence to belonging unto
 the said William Stephens and to his heirs,
 and assigns forever, subject to the payment
 and accrued interest thereon.

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Recorded

Wm. Stephens
 (Clock)
 225-330
 Arizona
 By
 J. C. C.

and rights to ditches and rivers and such
connection with such water rights, as may
be recognized and acknowledged by the
local customs, laws and decisions of courts,
and the right of the people
to a river or to do to extract and remove
therefrom, should the same be
found to preclude or intersect the premises
being granted, as provided by law and
to be reserved from the lands hereby granted,
a part of any thereof for ditches or canals
constructed by the authority of the United
States.

By William McKinley,
President of the United States of America,
have caused this order to be made patent,
and the seal of the General Land Office to
be hereunto affixed.

Given under my hand at the City of
Washington, the twenty-fourth day of June,
in the year of our Lord one thousand
nine hundred and one of the Independence
of the United States the one hundred and
thirty-fourth.

Witness my hand at the City of Washington,
this 24th day of June, 1901.
William McKinley, President.

Recorded, (this is for) Page 256
Wm. Stephens, Sept. 22nd A.D. 1901
Cedrick A. M. Jr. Book 22 of 26 vols. Page
123-124 Records of Washington Territory
Arizona.

By
J. E. McNeill
Deputy

Wm. J. Johnson
County Recorder

TERRIT
Count

Before
on this day

Instrument

Scope

(1st)

TERRITO
Count

Before
on this day

Given and

Find and

SEAL

William H. Morrison
of the County of Yavapai, Arizona
for and in consideration of
two hundred fifty \$ *DOLLARS*
Ellsworth W. Morrison of Camp Verde, Yavapai
Arizona
do hereby grant, sell and convey unto the said
Ellsworth W. Morrison
the South East Quarter of the North
Quarter of section six (6) in Township Thirteen (13) North,
Range Five (5) East of Silver and Salt River Base and
all in Yavapai County, Arizona and containing
more or less
together with an undivided one-fourth (1/4) interest
in the New Verde ditch built by John Reed and
for the purpose of conveying the water in the ditch
into and irrigating the above and other lands in
Yavapai County, Arizona.
I, *William H. Morrison* his
lawful attorney, hereby certify and administer, to warrant and forever defend, all and
singular the rights and appurtenances thereto in anywise belonging
unto the said *Ellsworth W. Morrison*
his heirs and assigns, against every person who lawfully claiming or to claim the same or any part thereof

Witness my hand and seal this 20th day of October A. D. 1905
William H. Morrison (SEAL)

(SEAL)
(SEAL)
(SEAL)
(SEAL)

William Stephens
on this day personally appeared *William Stephens*

known to me as the person whose name is subscribed to the foregoing

instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office, this *21st* day of *October* A. D. 190*8*

(Notarial Seal) *William Stephens* Notary Public
(My commission expires *July 26th 1911*)

TERRITORY OF ARIZONA,
County of Yavapai.

Before me, _____ a Notary Public in and for the County of Yavapai, Territory of Arizona,

on this day personally appeared _____ wife of and

known to me to be the person whose name is subscribed to the foregoing instrument,

Given under my hand and seal of office, this _____ day of _____ A. D. 190*8*

Notary Public

(My commission expires _____)

Filed and recorded at request of *E. D. ...*

McKee A. D. 190*8* at _____ o'clock _____ M., Book 26 of Deeds, page _____ of Records of Yavapai

County, Arizona.
SEAL
J. ... County Recorder
John ... Deputy Recorder.

vested in of
SOLICITOR
North
city
Mining
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Edward
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thereof.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
TERRITORY OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI.

George W. Hance and
Partheny H. Hance,

Plaintiffs,

vs.

Wales Arnold, Sarah J. Arnold,
S. C. Cherry, J. H. Wingfield,
Charles Harbeson, William J.
Davis, E. W. Monroe, William
M. Gray, E. J. Monroe, John H.
Scott, Belle Monroe, Elias Wyne,
The Verde Ditch Company, a vol-
untary association, and William
Stevens and William Lane, as
executors of the estate of
John Wood, deceased,

Defendants.

AMENDED AND SUPPLEMENTAL
COMPLAINT.

Now come the above named plaintiffs, having first obtained
leave of the Court, and file this their amended and supplemental
complaint, and allege:

I.

That at all the times hereinafter alleged, the plaintiffs,
George W. Hance and Partheny H. Hance, have been and are now
husband and wife.

II.

That since the 26th day of September, 1907, and before the
filing of this supplemental complaint, the defendant John Wood died;
that the defendants William Stevens and William Lane have duly qual-
ified as the executors of the estate of the said John Wood, deceased,
and that the death of the said John Wood being duly suggested to this
court, an order of the court was duly made and entered directing that
the said William Stevens and William Lane, as the executors of the

estate of John Wood, deceased, be made parties defendant herein.

III.

That The Verde Ditch Company is a voluntary association; that the plaintiffs and the defendants, Wales Arnold, Sarah J. Arnold, S. C. Cherry, J. H. Wingfield, Charles Harbeson, William J. Davis, E. W. Monroe, the estate of John Wood, William M. Gray, E. J. Monroe, John H. Scott and Belle Monroe, own all of the stock that has been issued or is now outstanding in said association.

IV.

That the plaintiffs and the defendants are each and all residents of Yavapai County, Territory of Arizona.

V.

That the plaintiff, George W. Hance, is the owner of and in actual possession of the following described land situate in Yavapai County, Arizona, to-wit:

West half of Southwest quarter of Section 27; Northeast quarter of Southeast quarter of Section 28; Northwest quarter of Northwest quarter of Section 34; Northwest quarter of Southeast quarter of Section 28; Northeast quarter of Southwest quarter of Section 28; East half of Northwest quarter of Section 28; all in Township 13 North, of Range 5 East, Gila and Salt River Meridian, consisting of 320 acres.

VI.

That the plaintiff, Partheny H. Hance, is the owner and in actual possession of the following described land situate in Yavapai County, Arizona, to-wit:

South half of Northwest quarter and Northeast quarter of Northwest quarter of Section 34, Township 13 North, of Range 5 East, G. & S. R. Meridian, consisting of 120 acres.

VII.

That all of the aforesaid land is arable and irrigable land situate, lying and being adjacent to the Verde River, in said County, which river is an actual stream of water, the water of which having been during all of the times herein mentioned diverted by means hereinafter described and applied to and carried upon the land above described for the purpose of irrigating the same.

VIII.

That in the year 1873, John Wood, John Davis, R. C. Campbell, Abraham M. Koontz and Jackson Thompson constructed what is known as the Old Verde Ditch, by means whereof they diverted the water of the said Verde River and caused the same to flow into the said ditch and through the same, and each of the parties, at the time of the completion of the construction of said ditch, owned a one-fifth interest therein, and by reason of the diversion into and through the same, became and were entitled to the right to the use of one-fifth of the water said ditch was and is capable of carrying. That the said hereinbefore named persons were tenants in common in the said ditch and co-appropriators of said water.

IX.

That from the time of the completion of the Old Verde Ditch the said Jackson Thompson used and applied upon the land above described as being now owned by George W. Hance, one-fifth of the water flowing through the said ditch, and applied the same thereon for the purposes of irrigation and domestic purposes in connection with the said land; and he, and his successors in interest, including the plaintiff, George W. Hance, have continuously used and applied one-fifth of the carrying capacity of the water in the said ditch and one-fifth of the water flowing through the same, in the irrigation

of said land, without interruption or hindrance, except as to the wrongs herein complained of and until the commission of such wrongs. That the above named plaintiff, George W. Hance, through meane conveyances, has become and now is the owner of an undivided one-fifth interest in said Old Verde Ditch, and is entitled to the use of the water-carrying capacity of said ditch, and the right to the use of one-fifth of the water actually flowing through the same.

X.

That in the year 1891, what is known as the New Verde Ditch was constructed by John Davis, John Wood and James Brown, who were tenants in common thereof and owned interests therein in the following proportions: John Davis, two-tenths; John Wood, six-tenths, and James Brown, two-tenths. That said ditch was constructed by said parties for the purpose of diverting said waters of the Verde River at a point higher up on the banks of said river than the head of said Old Verde Ditch, and was so constructed that the lower end of the New Verde Ditch emptied into the upper end of the Old Verde Ditch, and the waters of the former ditch thus flowed through the same into the Old Verde Ditch. That the head gates of the old ditch were destroyed and not thereafter used; that the said Wood, Davis and Brown, immediately upon the construction of the New Verde Ditch, diverted through the same, by means of head gates, the waters of the Verde River, and carried the same through the said ditch into said Old Verde Ditch; and all of the waters that theretofore had been diverted into said Old Verde Ditch at its original head gate were thereafter delivered to and into it by means of and through said New Verde Ditch, and from no other source, and the waters thereafter taken from said Old Verde Ditch through said New Verde Ditch were the same waters that had theretofore been diverted into said Old Verde Ditch under the afore-said original appropriations and by means of its original head gates.

XI.

That said waters have been continuously and uninterruptedly used and appropriated since the first diversion thereof, by the persons entitled to use the same, as tenants in common. That the said George W. Hance, by mesne conveyances from the original owners of the said New Verde Ditch, is now the owner of an undivided three-twentieths interest therein; and the said Partheny H. Hance, by certain mesne conveyances from the original owners of the said New Verde Ditch, is the owner of an undivided one-twentieth interest; and the said plaintiffs are entitled to the right to the use of the water flowing through said New Verde Ditch in the proportion to each of them respectively that they own and hold in said ditch, and are entitled to have the same flow through said New Verde Ditch and into the said Old Verde Ditch undiminished in quantity and without interference or hindrance from any person. That ever since said plaintiffs and their predecessors in interest acquired the right to the use of the waters flowing through both of said ditches, they and their predecessors have continuously used and appropriated the same for irrigation, domestic and stock purposes upon the land hereinabove described, and until the commission of the wrongs hereinafter complained of.

XII.

That after the completion of the said New Verde Ditch, it became necessary, by reason of the physical conditions, to construct a pipe line 700 feet long through which the waters could be carried from the New Verde Ditch to the Old Verde Ditch. Such pipe line was constructed, and ever since the construction thereof the waters flowing through said New Verde Ditch have been carried through said pipe line into the said Old Verde Ditch. That the above named plaintiff, George W. Hance, is the owner of an undivided seven-twentieths in and

to the said pipe line; and Partheny H. Hance, one of the above named plaintiffs, is the owner of an undivided one-twentieth in and to the said pipe line, and both are entitled to use the same for the carrying of said waters to the use of which they are entitled as aforesaid.

XIII.

That the average flow of the New Verde Ditch was and is 750 inches; that the capacity of the said pipe line was and is 250 inches.

XIV.

That by reason of the premises, the above named plaintiffs, George W. Hance and Partheny H. Hance, are entitled to the use of the waters diverted from said Verde River into and through said ditches and pipe line to the extent of their interest therein as hereinabove alleged, and are entitled to have the same, to the extent of their said interests, flow through said ditches and pipe line into and upon their said premises, for use as aforesaid, undiminished in quantity and free from interference or interruption by defendants or any other persons whomsoever.

XV.

That until about the year 1905, plaintiffs and their predecessors in interest enjoyed the full and uninterrupted use of all the waters to which they were entitled as aforesaid, and used and applied the same for the purposes above mentioned, and by means thereof were able to raise upon said premises and land large and valuable crops of grain, hay, alfalfa, fruit, and other farm products, and did also use and apply said waters for domestic and stock purposes in connection with said premises. That about the year 1905, defendants, by means of tap boxes opening into said ditches, diverted the waters flowing through said ditches, and began a system of wrongfully using and appropriating said waters, which violated the rights of plaintiffs

in that said defendants, and each and all of them, used and appropriated more of said waters than they were respectively entitled to, and diverted and applied the same upon their respective premises and thereby decreased the amount which would naturally have flowed through said ditches to the premises of the above named plaintiffs, and by reason thereof, said plaintiffs were not permitted to and could not and did not receive the amount of water upon their said premises to which they were entitled; and that this has been done and is possible because all of the defendants herein named reside at places and take the waters of said ditch and ditches at points which are above plaintiffs' said land and premises above described, plaintiffs' land being below that of the defendants, and the last that is irrigated through and by means of the water flowing through said ditches and pipe line. That the defendants and all and each of them, against the protests of plaintiffs, have persistently and in violation of the rights of plaintiffs, continued to take and appropriate more water than they or any of them have been entitled to, and in using the same have done so in a wasteful and prodigal manner, and have not in any way endeavored or tried to conserve the said waters or apply the same to their use in an economical way, so that all and each of the parties having a right to the use of the same could receive his just and proper proportion thereof; that in the use and diversion of the waters of the said ditches, no system or rule of apportionment is followed by defendants, and by reason of the lack of co-operation in the use and appropriation of said waters by defendants, the same is wasted to an unnecessary extent; that it is possible, by a proper system of supervision, to so regulate the division and apportionment of said waters that no appropriator will receive more than he is justly entitled to, and so that all of the appropriators will receive the amount of water that they are entitled to.

XVI.

That the defendants have persisted in the course aforesaid, and have deprived plaintiffs of the use of said water ever since the year 1905; and by reason thereof the plaintiffs have been unable to raise upon their said land the crops which theretofore it had produced in great abundance and to the great profit of the plaintiffs; that it is impossible to cultivate the said lands and raise crops thereon unless it is irrigated, and there is no way of irrigating the same except by means of the waters flowing through said ditches and pipe line; that during the year 1907, the plaintiffs were unable to raise any crops upon their said land because of the said unlawful use and appropriation of said waters by defendants; that the reasonable and usual yearly value of the crops raised upon the lands which were subject to irrigation by plaintiffs, as aforesaid, is at least the sum of \$1,000.00, and that the damage to plaintiffs is the sum of \$1,000.00 for the loss of their crops during the year 1907.

XVII.

That the plaintiffs are informed and believe that the above named defendants and each of them have or claim some right, title or interest in and to said ditches and pipe line, and also claim some right to the use of the waters flowing through the same, as shareholders, but the plaintiffs allege that the right, title and interest of the defendants in and to said ditches and the use of said waters, whatever it may be, is not and cannot be or extend to an amount of interest or use which, if asserted, would diminish the right, title, interest and use of the plaintiffs below what is herein claimed by and for them, and each of them, in and to said ditches and pipe line, and that the right, title and use of plaintiffs and each of them, to the use of the waters flowing through the same are, to the extent hereinabove claimed and asserted, prior and superior to the rights and interests of the defendants and each of them.

WHEREFORE, plaintiffs pray the judgment and decree of this honorable court:

1. That the plaintiffs are entitled to the interests in said ditches and pipe line and the use of the waters flowing through same to the extent hereinabove alleged, and that the rights and interests of the defendants, and each of them, therein, are inferior and subordinate to that of the plaintiffs to the extent claimed and asserted by the plaintiffs, and that the right and title of plaintiffs, as aforesaid, be forever quieted and established in them, and each of them, as hereinabove claimed and asserted, and against the said defendants, and each of them; and that the extent and amount of the rights and interests of said plaintiffs and said defendants, and each of them, in and to said ditches and pipe line, and the right to the use of the said waters, be fixed, established and determined by a decree of this court.

2. That the defendants, and each of them, be forever enjoined and restrained from in any manner interfering with the appropriation, use and enjoyment by the plaintiffs of the waters of the Verde River flowing through said ditches and said pipe line to the extent to which the said plaintiffs are entitled to appropriate, use and enjoy the same, or from using, appropriating or diverting any of the waters flowing through the same which plaintiffs are entitled to use and appropriate.

3. That the court establish a proper and equitable method for the measurement of the waters flowing through the said ditches and pipe line, and the apportionment of the same among the appropriators, who are entitled thereto, in the proportions to which each of said appropriators is entitled; that the court appoint some suitable superintendent, who shall supervise and superintend, under the authority and direction of the court, the proper appropriation and distribu-

tion of said waters, with power, conferred by the decree of this honorable court, to enforce the same; and that the court determine in what proportion each of said appropriators shall contribute to the expense of the care and maintenance of said ditches and pipe line.

4. That the plaintiffs have judgment against the defendants for the sum of \$1,000.00 damages, as aforesaid.

5. For costs of this action, and for such other further relief as to this court seems just and equitable.

George W. Hance

Attorneys for Plaintiffs.

Territory of Arizona,)
) ss.
County of Yavapai.)

George W. Hance, being duly sworn, on his oath says: That he is one of the plaintiffs in the above entitled action and that he has read the foregoing complaint and knows the contents thereof, and that the allegations contained in said complaint are true in substance and in fact.

George W. Hance

Subscribed and sworn to before me this 24th day of February, 1908.

My commission expires Oct. 30, 1909.

J. J. Clark

Notary Public.

LAW OFFICES
REESE M LING
Rooms 19 & 20 BASHFORD BLOCK
PRESCOTT, ARIZONA

1
2 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
3 TERRITORY OF ARIZONA, IN AND COR THE COUNTY OF YAVAPAI.
4

5 ++++++

6
7 GEORGE W. HANCE and
8 PARTHENY H. HANCE,

9 Plaintiffs,

10 -VS-

11 WALES ARNOLD, SARAH J. ARNOLD,
12 S.C. CHERRY, J.H. WINGFIELD,
13 CHARLES HARBESON, WILLIAM J. DAVIS,
14 F. W. MONROE, WILLIAM M. GRAY, E.J.
15 MONROE, JOHN H. SCOTT, BELLE MONROE,
16 ELIAS WYNE, THE VERDE DITCH COMPANY,
17 a Voluntary Association, and WILLIAM
18 STEPHENS and WILLIAM LANE, as Executors
19 of the Estate of John Wood, Deceased,

20 Defendants.

21
22 No. 4722
23 CONCLUSIONS OF LAW
24 and
25 J U D G M E N T
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34 This cause coming on this, the 23rd day of March,
35 1909 before the Court sitting without a jury, the respective
36 parties being present and represented by their counsel, REESE
37 M. LING and J. R. RUSSELL, Esqs., for Plaintiffs, and NORRIS &
38 ROSS for Defendants, the cause was submitted upon an agreed
39 statement of facts, which statement is this day filed with the
40 records of this Court.

41 The Court having considered the statement, hearing
42 the argument of counsel and being duly advised in the premises,
43 makes the following conclusions of law and judgment herein:

44 I.

45 That by the construction of the lower or old Verde
46 ditch as described in the pleadings of this case, the plaintiff

1 and a portion of the defendants and their grantors became and
2 are entitled to the use of the waters flowing through said ditch
3 in the following proportion, towit: The Plaintiffs one-fifth;
4 the Scott Ranch or See & Reeves one-fifth; John Woods ranch
5 one-fifth; and E. J. Monroe two-fifths.

6 II.

7 That the parties hereto are owners of the following
8 shares or interests in the upper or new Verde ditch respective-
9 ly:

10 George Hance, plaintiff 2/10
11 John H. Scott, 1/10
12 Estate of John Wood, 1/10
13 E. J. Monroe, 3/20
14 E. W. Monroe, 3/40 or 15/200
15 W. J. Davis, (Jno. Bristow) 3/40 or 15/200
16 C. H. Harbeson 9/100 or 18/200
17 J. W. Wingfield, 6/100 or 12/200
18 S. C. Cherry, 2/40 or 10/200
19 Wales Arnold, 3/40 or 15/200
20 Marksbury, successor to Wood estate 1/40 or 5/200.

21 III.

22 That the right to the use of the waters flowing
23 through said upper or new Verde ditch, whether diverted upon
24 lands before it reaches the old or lower Verde ditch or whether
25 after, is a common co-ordinate right equally enjoyed by the sev-
26 eral parties, plaintiff and defendants, without reference to
27 priority of appropriation or use.

28 IV.

29 That the expense of repair and maintenance of the old
30 or lower Verde ditch should be borne ratably by the parties
31 entitled to the use of the waters flowing there through, accord-
32 ing to their several rights to such use. That is to say, all

1 parties interested in the ditch shall bear the expenses of re-
2 pair and maintenance proportionately from the head or Ryall
3 flume above the pipe line down to plaintiffs' point of diversion
4 from said old Verde ditch.

5 V.

6 That the expense of the maintenance of the upper or
7 new Verde ditch should be borne by the share or interest holder
8 therein according to their respective shares or interest from
9 the head, together with the dam or diversion to and including
10 said Ryall flume.

11 VI.

12 That the proceeds arising from sales of water should
13 be by the purchasers paid over to the ditch company, and the
14 ditch company in turn account to the owner or owners of the
15 interests upon whose account or accounts such sales shall be
16 made, first charging said interest or interests with its or
17 their share of the cost of repair and maintenance of the ditch.

18 VII.

19 That the water of the lower or old Verde ditch which
20 shall at all times be at least one-third the flow of the upper
21 ditch shall be so divided and distributed that each one-fifth
22 interest may have the use of all of the water every fifth day,
23 except there should be allowed to flow through the entire
24 ditch at all times a sufficient amount of water for stock and
25 domestic purposes for all parties entitled to the use of the
26 water including plaintiffs.

27 VIII.

28 That all parties interested should contribute to the
29 expense of the water commissioner including the repair and
30 maintenance of the ditch under him in proportion to their
31 several interests in said upper or new ditch, and that the sale
32 price of water sold from plaintiff's interest since the commence-
ment of this action should be credited to him and applied to

1
2 the liquidation in part of the charge against him for such
3 expense, and the balance he should be required to pay as a con-
4 dition precedent to the enjoyment of his rights as specified
5 in the decree entered herein.

6 IX.

7 That nothing contained herein or in said decree
8 shall be construed as prohibiting or limiting the enlargement
9 or expansion of the lower ditch, pipe line or the upper ditch
10 whenever the parties respectively interested therein shall deem
11 the same desirable.

12 X.

13 That the parties, plaintiffs and defendants, should
14 be required to pay their respective costs incurred in this
15 suit.

16 That a decree be entered herein accordingly.

17 Done in open Court this the 23rd day of March A.D.
18 1909.

Frederic C. Shaw

J U D G E.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
TERRITORY OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI.

GEORGE W. HANCE, et al,

Plaintiffs,

-vs-

WALLES ARNOLD, et al,

Defendants.

STIPULATION OF FACTS.

It is stipulated by and between the parties hereto that the following statement of facts is correct and that the Court may enter a decree herein in accordance therewith:

That George Hance is entitled to one-fifth of the flow of the water in the old or lower Verde ditch. That John Wood, John Davis, R. C. Campbell, Abram N. Koontz and Jackson Thompson constructed the old Verde ditch. That each one owned land irrigated by the waters flowing through it.

II.

That it was constructed and thereafter maintained by all working at the head of the ditch and to the lower side of the land covered by the first diversion, whereupon the user from that diversion dropped out. The remaining users worked to the lower side of the land covered by the second diversion, when that user dropped out and so on to the last user.

III.

The plaintiff now wishes this method of up-keep of the ditch so changed that all of the several users will work and

1 bear expense in common according to their proportionate
2 interest in the water.

3 IV.

4 That about 1888 the head of this ditch was washed
5 out and was entirely destroyed beyond possibility of repair.

6 V.

7 That about 1889 or 1890 they undertook to build a new
8 diversion for this ditch on the reservation and were forbidden
9 to continue it by the officers of the Fort Verde military post.

10 VI.

11 That about 1891 John Wood, John Davis and James
12 Brown constructed what is known as the new Verde ditch; the
13 point of diversion for which was at the point of the diversion
14 formerly used by the old Government ditch. John Wood construct-
15 ed and owned six-tenths, Davis two-tenths and James Brown two-
16 tenths.

17 VII.

18 All the water thereafter used in the lower or old
19 ditch was delivered to it through this new ditch.

20 VIII.

21 All of the owners of land irrigated by waters
22 through the old ditch owned severally certain shares or parts
23 of shares in the new ditch, and have been at all times here-
24 tofore charged with such proportion of the total expense of
25 repair and up-keep of the new ditch as the share or parts of
26 share bears to the ten shares or whole of the upper ditch.
27 The lower end of the Ryall or last flume above the pipe-
28 line is what is known and treated as the lower end of the
29 new or upper ditch.

IX.

30 Plaintiff G. W. Hance, has been credited with
31 four-twentieths ownership or two shares in the upper or new
ditch and has been charged with the maintenance thereof in
that proportion.

Law Office
RESE M. LIND
PUEBLO, ARIZONA

X.

It is hereby stipulated that the several owners in the lower ditch are entitled to the flow of the waters delivered by it according to their interests as follows: The plaintiffs one-fifth; the Scott Ranch or See & Reeves one-fifth; John Woods ranch one-fifth; and E. J. Monroe two-fifths.

XI.

That the several users of water furnished through the old ditch are entitled to the flow of the water in the upper ditch and acknowledge themselves chargeable with the cost of repair and maintenance in the following proportions:

George Hance, plaintiff $2/10$

John H. Scott, $1/10$

Estate of John Wood, $1/10$

E. J. Monroe, $3/20$

XII.

That the other owners in the new ditch are as follows:

E. W. Monroe, $3/40$ or $15/200$

W. J. Davis, (Jno. Bristow) $3/40$ or $15/200$

C. E. Harbison $9/100$ or $18/200$

J. W. Wingfield, $6/100$ or $12/200$

S. C. Cherry, $2/40$ or $10/200$

Wales Arnold, $3/40$ or $15/200$

Marksbury, successor to Wood Estate $1/40$ or $5/200$

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XV.

That since the commencement of this action during the year 1908 there was sold 100 inches of water on account of the interest of the plaintiff, and the proceeds, \$300.00, should be credited on his account and applied to his part of the Commissioner's expense of keeping up the ditch. In addition to that, there was sold nine inches of water for \$27.00, 2/10 of which should also be credited to said plaintiff George Hance, making a total credit in his behalf for water sold since the commencement of the action \$305.40.

That the cost of Commissionership and keeping up the ditch properly chargeable to plaintiff, since the commencement of this action is \$500.64, and after deducting said amount of \$305.40 to his credit for water sold, leaves a balance of \$195.24 yet due from plaintiff.

LAW OFFICE
REESE M. LING
ROOM 10 10 W. WASHINGTON
PRESCOTT ARIZONA

Reese M. Ling
Je. Russell
Atty for Def.

Stannis Rood
attg for def.

\$	1	4	5
Rec Fee	P	Co	St

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

FILED

3:00 O'Clock, *3*

OCT 17 1986

TED ALLERT, VINCE V. HIGGINBOTHAM,
GLEN W. EVERETT, Commissioners
of the VERDE DITCH COMPANY,

Plaintiffs,

vs.

ALBERT JAMES, et al.,

Defendants.

No.'S 44140 BARBARA BOYLE, Clerk
45701 By *Patsy C. Jenney*
Deputy

ALBERT JAMES, Husband of Theresa
James, dealing herein with his
sole and separate property, **INDEX**

Counter-Plaintiff,

vs.

W.F. MARTIN and MONTEREY MARTIN;
the heirs and devisees of W.F.
MARTIN and MONTEREY MARTIN; if
deceased; JOHN DOES 1 through
408; and the heirs and devisees
of JOHN DOES 1 through 408, if
deceased.

Counter-Defendants.

J U D G M E N T



INSTRUMENT # 8641988
OFFICIAL RECORDS OF
YAVAPAI COUNTY
PATSY C. JENNEY
REQUEST OF:

MABERY & STADELMAN
DATE: 11/03/86 TIME: 14:45
FEE: 5.00
BOOK 1872 PAGE 412 PAGES: 005

MICROFILMED

This matter, having come on regularly for Final Hearing
before this Court on the 21st day of July, 1986; Plaintiffs,
VINCE V. HIGGINBOTHAM and GLEN W. EVERETT, as Commissioners of
the Verde Ditch Company, appearing in person and by and through
their attorney, L. Richard Mabery, and Defendant/Counter-Plain-
tiff ALBERT JAMES, appearing neither in person nor by counsel.

1 Evidence having been introduced, testimony heard and the Court
2 having been fully advised in the premises, finds as follows:

3 1. The Court confirms its previous Order striking the
4 Plaintiffs' Complaint in Cause Number 45701 and entering judgment
5 on behalf of TED ALLERT, VINCE V. HIGGINBOTHAM and GLEN W.
6 EVERETT, as Commissioners of the VERDE DITCH COMPANY, in Cause
7 No. 44140.

8 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that
9 Plaintiffs TED ALLERT, VINCE V. HIGGINBOTHAM and GLEN W. EVERETT,
10 as Commissioners of the VERDE DITCH COMPANY, have Judgment
11 against the Defendant ALBERT JAMES as follows:

12 1. Title is hereby vested in and quieted to the VERDE
13 DITCH COMPANY for the land located in Yavapai County, State of
14 Arizona and described as follows:

15 A strip or piece of land in Yavapai
16 County, Arizona, bounded and described as
follows, namely:

17 Commencing at the north boundary of the
18 W.F. Martin Ranch, six (6) feet west of
19 the west bank or border of the Verde
20 Ditch, thence southerly and following the
21 west bank and border with all curves
22 following the meander of said Verde, in a
23 Southerly direction two hundred and ten
24 yards, or one-eighth (1/8) of a mile, to
25 the north boundary of the John J.
26 Markesberry land; thence east to the
27 Verde River, thence Northerly with said
Verde River two hundred and ten (210)
yards, thence west to the place of
beginning; and is a portion of the north
one half (N 1/2), of the north east
quarter of the South east quarter of
Section Twenty-Three (23), and the North
one half of the north west quarter (N.W.
1/4), of the South west quarter (S.W.
1/4) of Section Twenty-Four (24),
Township Fourteen north, Range Four (4)
East of Gila and Salt River Meridian and
Base, in the County of Yavapai, State of

Mabery & Stadelman
113 East Gurley Street
PRESCOTT, ARIZONA 86301
(602) 778-1116

1 Arizona, containing four acres more or
2 less, and is the land through which the
3 Verde Ditch was constructed in the Spring
4 of 1918.

5 2. All claims of the Defendant ALBERT JAMES in and to
6 the real property described above are found to be inferior and
7 subordinate to the right and interest of the VERDE DITCH COMPANY.

8 3. The VERDE DITCH COMPANY shall have an easement, of
9 sufficient width, along each side of the Verde Ditch to allow for
10 ingress, egress and the maintenance and repair of the Verde Ditch
11 as it exists over and across the following described property:

12 Rio Verde Vista Subdivision, consisting
13 of Lots 1 through 119, according to the
14 plat of record in the Office of the
15 Yavapai County Recorder, Book 12 of Maps,
16 page 96.

17 All that portion of the Northwest quarter
18 of the Southwest quarter of Section 24,
19 Township 14 North, Range 4 East of the
20 Gila and Salt River Base and Meridian
21 described as follows:

22 BEGINNING for reference at the West
23 quarter corner of Section 24, Township 14
24 North, Range 4 East of the Gila and Salt
25 River Base and Meridian, thence South
26 86°40' East, 810.0 feet to the POINT OF
27 BEGINNING; thence continuing South 86°40'
28 East, 507.53 feet; thence South 1°37'
29 West, 846.97 feet; thence North 40°28'
30 West, 499.0 feet; thence North 25°06'
31 West, 303.3 feet; thence North 7°46'
32 West, 223.9 feet.

33 EXCEPTING the property described in
34 Paragraph 1 above, belonging to the VERDE
35 DITCH COMPANY.

36 4. ALBERT JAMES is further enjoined and restrained
37 from removing, altering or changing the existing dyke on the west
38 side of the James' property described above.

39 300-1872-414

5. Defendant ALBERT JAMES, and all persons or entities claiming under him are permanently enjoined from asserting any adverse claim to the VERDE DITCH COMPANY's title to said property;

6. For compensatory damages in the amount of TWENTY SEVEN THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$27,550.00);


7. For punitive damages in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00);

8. For attorney's fees in the amount of FIVE THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$5,790.00), less attorney's fees paid to date by Defendant ALBERT JAMES in the amount of \$447.00;

9. For costs incurred to date in the sum of FOUR HUNDRED FIFTY SIX DOLLARS AND EIGHT CENTS (\$456.08), less costs paid to date by Defendant ALBERT JAMES in the amount of \$95.49;

10. Interest shall commence from the date hereon until paid in full.

DONE IN OPEN COURT this 17 day of October, 1986.

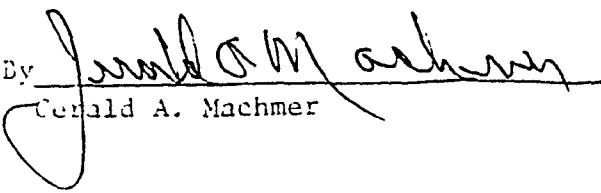

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Entered Civil Docket 72 Page 630

MACHMER & SCHLOSSER, LTD.
Attorneys for Defendant,
ALBERT JAMES

RECORDED JUDGMENT BOOK 46 PAGE 155-8

By 
Gerald A. Machmer

800-1872 PAGE 415

ORIGINAL D THIS 28
FILED Nov. 1988
EMEL BOUTON
Clerk Superior Court
By: Diana Weatherford
Deputy

L. Richard Mabery, Esquire
101 E. Gurley St., Suite 203
Prescott, Arizona 86301
(602) 778-1116
Arizona State Bar I.D. No. 005188

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

THE ESTATE OF VIRGINIA F. WEBB,)	No. 47115
Plaintiff,)	Division 2
vs.)	JUDGMENT
THE VERDE DITCH CO., et al.,)	
Defendants.)	

This cause came on for trial, before the Court, sitting without a jury, on the 23rd day of August, 1988; the Plaintiff appearing by and through its Personal Representative, PAUL M. WEBB, and WM. LEE EATON, its attorney; the Defendants appearing in person and by and through their counsel, MARY B. WILSON of the law firm of CRAMPTON, WOODS, BROENING & OBERG, and L. RICHARD MABERY of the law firm of L. RICHARD MABERY, P.C.; and evidence, both oral and documentary, having been introduced in support of the respective positions of the parties, and the Court, being fully advised in the premises, after having considered said evidence, finds as follows:

1. That Plaintiff shall have Judgment quieting title in and to the following described real property located in

1 Yavapai County, Arizona, to-wit:

2 The North half of the Northeast Quarter of
3 Section 36, Township 14 North, Range 4 East of
4 the Gila and Salt River Base and Meridian,
5 Yavapai County, Arizona; and the Southeast
6 Quarter of Section 25, Township 14 North,
7 Range 4 East of the Gila and Salt River Base
8 and Meridian, Yavapai County, Arizona; and
9 Lots 3 and 4 of Section 30, Lot 1 in the North
10 half of the Northeast Quarter of the Northwest
11 Quarter of Section 31, Township 14 North,
12 Range 5 East of the Gila and Salt River Base
13 and Meridian, Yavapai County, Arizona.

14 TOGETHER with that certain parcel quit claimed
15 by the County of Yavapai in Quit Claim Deed
16 recorded July 2, 1985, in Book 1734 of Offi-
17 cial Records, Page 459, records of the Yavapai
18 County Recorder.

19 SUBJECT TO, HOWEVER, the rights of the Verde Ditch Company in the
20 Verde Ditch which crosses said real property and a secondary
21 access easement for maintenance and repair of the Verde Ditch.
22 The primary and secondary easements are defined as an area thirty
23 (30) feet in width on each side of the Verde Ditch, measured from
24 the center line of the Verde Ditch as it exists as of the date of
25 this Judgment. The secondary access easement for maintenance and
26 repair of the Verde Ditch shall include the right of the Verde
27 Ditch Company to cut and remove any trees, brush or other growth
28 contained within the easement way at such time as removal is
needed or necessary for the maintenance and repair of the Verde
Ditch.

2. That Plaintiff is not entitled to monetary damages.

3. That Defendants' Counterclaim shall be dismissed
without prejudice pursuant to stipulation of the parties.

4. That neither the Plaintiff nor the Defendants are
entitled to an award of attorneys' fees and/or costs.

1 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS
2 FOLLOWS:

3 1. That Plaintiff shall have Judgment quieting title
4 in and to the following described real property located in Yava-
5 pai County, Arizona, to-wit:

6 The North half of the Northeast Quarter of
7 Section 36, Township 14 North, Range 4 East of
8 the Gila and Salt River Base and Meridian,
9 Yavapai County, Arizona; and the Southeast
10 Quarter of Section 25, Township 14 North,
11 Range 4 East of the Gila and Salt River Base
12 and Meridian, Yavapai County, Arizona; and
13 Lots 3 and 4 of Section 30, Lot 1 in the North
14 half of the Northeast Quarter of the Northwest
15 Quarter of Section 31, Township 14 North,
16 Range 5 East of the Gila and Salt River Base
17 and Meridian, Yavapai County, Arizona.

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27 (30) feet in width on each side of the Verde Ditch, measured from
28 the center line of the Verde Ditch as it exists as of the date of
this Judgment. The secondary access easement for maintenance and
repair of the Verde Ditch shall include the right of the Verde
Ditch Company to cut and remove any trees, brush or other growth
contained within the easement way at such time as removal is
needed or necessary for the maintenance and repair of the Verde
Ditch.

2. That Defendants' Counterclaim shall be dismissed
without prejudice.

DONE IN OPEN COURT this 28 day of Nov.

JUDGE OF THE SUPERIOR COURT

WM. LEE EATON

- 4 -